



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

Claimant was injured on December 21, 2001, when he fell through some wooden planks on a fire escape. The Judge determined that claimant's accident did not occur on the premises rented by respondent and the Board agrees. The greater weight of the evidence indicates the fire escape was not on the premises rented or maintained by respondent. Moreover, the fire escape was located off a common hallway that was used by other tenants in the building.

The Judge also determined that claimant's accident occurred after he left respondent's premises for a smoke break. The Board agrees. On the morning of the accident, claimant and coworker Kelly Stamper entered the building together, went to their offices, set their belongings down, and immediately went to the fire escape to smoke a cigarette before beginning work.

The Board concludes that at the time of the accident claimant had not assumed the duties of his employment, was not engaged in an activity incidental to his employment with respondent, and was not on respondent's premises when he was injured. Accordingly, claimant's accident did not arise out of and in the course of employment. The May 29, 2002 preliminary hearing Order should be affirmed.

**WHEREFORE**, the Board affirms the May 29, 2002 preliminary hearing Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2002.

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BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant  
D. Steven Marsh, Attorney for Respondent and its Insurance Carrier  
Jon L. Frobish, Administrative Law Judge  
Director, Division of Workers Compensation